

MEMORANDUM

June 18, 2007

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: JERRY M. CUSTIS
Principal Deputy County Counsel
General Litigation Division

RE: William Earley v. County of Los Angeles, et al.
Los Angeles County Superior Court Case No. GC037373

DATE OF
INCIDENT: August 4, 2005

AUTHORITY
REQUESTED: \$425,000.00

COUNTY
DEPARTMENT: Agricultural Commissioner/Weights and Measures

CLAIMS BOARD ACTION:

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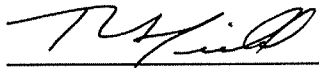
Approve

☐

Disapprove


☒

Recommend to Board of
Supervisors for Approval



ROCKY A. ARMFIELD

, Chief Executive Office



JOHN F. KRATTLI

, County Counsel



MARIA M. OMS

, Auditor-Controller

on August 6, 2007

SUMMARY

This is a recommendation to settle for \$425,000 a lawsuit brought by William Earley, for personal injuries and lost income resulting from a head-on collision with a County vehicle.

LEGAL PRINCIPLES

The County is liable for the negligent operation of a vehicle by a County employee, if the employee was acting in the course and scope of his employment. In some instances, the "collateral source rule" does not apply to government agencies and so does not permit a plaintiff's recovery of the cost of medical treatment paid by his health insurer.

SUMMARY OF FACTS

The collision occurred on Angeles Crest Highway as Mr. Earley, a policeman employed by the City of South Pasadena, was driving home to Palmdale from work. A County truck driven by a temporary County employee, Marshall Rhyne, crossed the center line of the highway and hit Mr. Earley's car head-on. The collision was violent, and both vehicles involved were damaged beyond repair. Mr. Earley was extricated from his vehicle by force and then airlifted to a Pasadena hospital. Photographs of the collision site taken by the Highway Patrol were dramatic in showing the forces involved and the exceptional damage to Mr. Earley's vehicle.

Mr. Rhyne's employment with the County Agricultural Commission/Weights and Measures Department ended a few weeks after the collision. Mr. Rhyne admitted to police and to department managers that he was responsible for the collision. He said his County vehicle crossed to the opposite side of the road, because he was driving too fast.

Mr. Earley suffered a shattered forearm, a broken leg, a concussion and a number of lesser injuries. He was unable to work for about a month, and then worked in a light-duty assignment for a further 1 ½ months before returning to full duty. He asserted that his concussion rendered him unable to remember things from day to day and unable to sleep for more than two hours at a time at night. A permanent plate was inserted in his forearm to allow the bones to heal properly.

In addition to damages for pain and suffering, Mr. Earley also sought damages of about \$82,000 for his medical expenses and an unstated amount for his memory loss. He alleged that his memory loss caused him to fail a promotional examination, because he could not remember information needed in the examination.

DAMAGES

Should this matter proceed to trial, we estimate the potential damages as follows:

Medical specials	\$ 82,000
Loss of income	\$ 12,000
Pain & suffering	\$750,000 to \$1,400,000
Loss of promotional opportunities	<u>\$ 50,000</u>
TOTAL	\$894,000 to \$1,544,000

STATUS OF CASE

The lawsuit was filed on June 26, 2006. No trial date has been set. Roundtables were held on March 7 and May 29, 2007. Participating were representatives of the Agricultural Commissioner/Weights and Measures Department and the Office of the County Counsel. Because the County employee involved in the collision admitted liability and there did not appear to be any viable defenses that the County might assert, the roundtables focused on seeking a favorable settlement. In the later roundtable, held just before the mediation session, the participants viewed a settlement of less than \$700,000 to be advisable and one of \$500,000 or less to be very favorable to the County.

A mediation was conducted on June 12, 2007, and a tentative settlement was reached for \$425,000.

Expenses incurred by the County in defending the case were attorneys' fees of \$15,666.02 and costs of \$4,357.13.

EVALUATION

We evaluated Mr. Earley as a strong and sympathetic witness in his own behalf, being a practiced court witness in his role of police officer. It appeared that there was no chance of the County's avoiding liability, given the circumstances of the accident and the admission of fault by the County driver. Photographs and descriptions of the accident were strongly unfavorable to the County, showing a terrible accident scene with the involved vehicles badly tangled and demolished. In addition, we also believed that the case had strong jury appeal for Mr. Earley, because of his account of suffering short-term memory loss, his failure on the promotional examination and the onset of chronic insomnia.

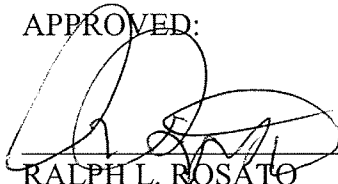
We evaluated the adverse jury verdict potential at from \$894,000 to \$1,544,000, with no chance that the County would prevail. In view of this potential loss, we evaluated a settlement at \$700,000 or less to be favorable to the County and one of \$500,000 or less to be very advantageous. The negotiated settlement of \$425,000 came in below our best view of a settlement that the County should seek.

RECOMMENDATION

There is a potential for a verdict considerably in excess of the agreed settlement amount, because of the extensive and continuing injuries suffered by Mr. Earley and the violent nature of the collision.

We believe that settlement of this litigation for \$425,000 is in the best interest of the County. The Agricultural Commissioner/Weights and Measures Department concurs in our recommendation.

APPROVED:

A handwritten signature in black ink, appearing to read 'R. Rosato', is written over a horizontal line.

RALPH L. ROSATO
Assistant County Counsel
General Litigation Division

RLR:JMC:jm

CORRECTIVE ACTION PLAN

1. General Information

Date CAP completed:	May 24, 2007
Department Involved:	Agricultural Commissioner/ Weights and Measures

2. Incident/Event Specific Information

Date of incident/event	August 4, 2005
Location of incident/event	Angeles Crest Highway (1.25 miles west of Slide Canyon Bridge)
Claim Adjuster	Gerald Custis, County Counsel Carl Warren
If claim is in litigation, please complete the following:	
Attorney	Gerald Custis (County Counsel)
• Phone Number	(213) 974-1965

3. Incident/Event Description

Individuals Involved	William Earley, Claimant Marshall Rhyne, Defendant (Former County of Los Angeles Employee)
Nature of incident/event	Vehicle collision
Provide a brief written description of the incident/event	Plaintiff was driving eastbound on Angeles Crest Highway when the Defendant, a County employee who was traveling westbound at an excessive rate of speed, crossed the double line and collided head-on with the Plaintiff's vehicle.

4. Corrective Action Plan Problem Statement

Provide a written nature of the incident/event problem statement:

A Department employee operating a Department-owned vehicle failed to exercise reasonable care and judgment resulting in a serious vehicle accident.

5. Root Cause Analysis

Root Cause analysis tool used	N/A
Incident/event root causes	N/A

6. Corrective Action Plan Steps

Task number	001
Task name	Pre-Driving Training and Evaluation
System issue	Departmental Policy/Procedure Manual
Schedule start date	July 1, 2007
Schedule completion date	Ongoing task
Responsible person(s)	Human Resources Manager, Bureau Chiefs
Task Description	Before any department employee can independently operate a County vehicle, he or she must attend a driver safety training and receive a documented, behind the wheel evaluation from a supervisor.

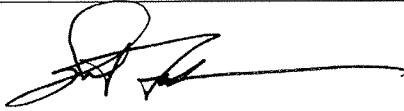
Task number	002
Task name	Ongoing Driving Training and Evaluation
System issue	Departmental Policy/Procedure Manual
Schedule start date	July 1, 2007
Schedule completion date	Ongoing task
Responsible person(s)	Supervisors, Deputies and Bureau Chiefs
Task Description	<p>The department will provide mandatory bi-annual safety driver training courses.</p> <p>No less than annually, supervisors shall ride with each of their subordinates to observe his/her driving and identify any weaknesses and needs for training.</p>

Task number	003
Task name	Livescan Background Checks
System issue	New Hire Process
Schedule start date	August 1, 2007
Schedule completion date	Ongoing task
Responsible person(s)	Human Resources Staff
Task Description	Livescan Background Checks required and results obtained on all candidates before appointment.

Task number	004
Task name	GPS installation
System issue	Departmental Policy/Procedure Manual
Schedule start date	Ongoing implementation
Schedule completion date	May 2008
Responsible person(s)	IT Manager, Bureau Chiefs
Task Description	Install GPS tracking devices in all Departmental vehicles.

7. Review and Authorization

The department has reviewed the incident/event investigation and Corrective Action Plan.

Review and authorization steps	Signature	Date
Document reviewed by Risk Management Staff		
Document approved/reviewed by Department Head		07-02-07